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No. 85-1358

In the Supreme Court of the United States

OCTOBER TERM, 1985

WILLIAM L. LUKHARD, COMMISSIONER
OF THE VIRGINIA DEPARTMENT OF SOCIAL SERVICES,
PETITIONER

v.

ONA MAE REED, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES

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QUESTION PRESENTED

Whether the Social Security Act requires that lump-sum personal injury awards be treated as "resources," rather than "income," for purposes of computing eligibility for and amount of AFDC benefits.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-22) is reported at 774 F.2d 1270. The opinion of the district court on summary judgment (Pet. App. 23-54) is reported at 591 F. Supp. 1247. The opinion of the district court on the preliminary injunction is reported at 578 F. Supp. 40.

JURISDICTION

The judgment of the court of appeals was entered on October 10, 1985. A petition for rehearing was denied on November 14, 1985 (Pet. App. 55-57). The petition for a writ of certiorari was filed on February 11, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Under the Aid to Families with Dependent Children (AFDC) program, Title IV, Part A, of the Social Security

Act (42 U.S.C. 601 *et seq.*), the federal government provides matching funds to states for the purpose of furnishing assistance to families with needy children. States participate in the AFDC program at their option, and at the present time all states do participate. In order to be eligible for matching funds, a state must administer its AFDC program in conformance with a state plan approved by the Secretary of HHS that embodies the requirements set forth in the Act and underlying federal rules and regulations. See Section 402(a) of the Act, 42 U.S.C. 602(a); 45 C.F.R. 201.0 *et seq.*

In order to determine a family's eligibility for AFDC payments, the state distinguishes between the family's "income" and its "resources". If the family's countable resources in a given month exceed a state-specified resource limit (subject to a federally prescribed maximum of $1,000, 42 U.S.C. 607(a)(7)(B)), the family is not eligible to receive AFDC benefits that month. By the same token, if its countable income in a particular month is above a state-specified need standard, the family also is ineligible for AFDC benefits.

Prior to 1981, when an AFDC recipient received a lump sum from any source, such as an insurance settlement or lottery winnings, the money was treated as income in the month received and as resources in succeeding months. Because of concern that this treatment tended to encourage recipients to dissipate the lump sum quickly (because they would become eligible for benefits again as soon as their resources dropped below the resource limit), Congress enacted a new rule in the Omnibus Budget Reconciliation Act of 1981 (OBRA), Pub. L. No. 97-35, § 2304, 95 Stat. 845, addressing the proper treatment of lump sums. The statute now provides that lump sum income is to be prorated over a period of months determined by dividing the sum (and other countable income) by the applicable monthly need standard. Section 402(a)(17), 42 U.S.C. 602(a)(17), *reprinted at* Pet. App. 64-65. The result

of this amendment is that, with limited exceptions not relevant here, the receipt of a substantial lump sum will make the recipient ineligible for AFDC payments for several months, even if the lump sum is dissipated before that period expires. See Pet. App. 6-7.

2. Three of the private respondents brought this class action suit in the Western District of Virginia to challenge the application of the lump sum rule to personal injury awards that they had received. Respondent Reed and her two minor children had been receiving AFDC benefits of $233 per month when she was awarded a lump sum workers' compensation payment of $5,400 in June 1982. Petitioner, the Commissioner of the Virginia Department of Social Services applied the lump sum rule of 42 U.S.C. 602(a)(17) and found that the award made Reed ineligible for further AFDC benefits until approximately March 1984. Respondent Reed exhausted her lump sum income by August 1982. Respondents Long and Wilcher also received personal injury awards and similarly exhausted their lump sum before they could reapply for AFDC benefits. The plaintiffs sought immediate restoration of their AFDC benefits, although their ineligibility period computed under the lump sum rule had not yet expired, on the ground that a personal injury award was not "income" covered by 42 U.S.C. 602(a)(17). In June 1983, the court granted the plaintiffs' motion for a preliminary injunction, but denied class-wide preliminary relief. 578 F. Supp. 40.

On July 26, 1984, the district court certified the requested class and granted the plaintiffs' motion for summary judgment on the ground that personal injury awards are not subject to the lump sum rule (Pet. App. 23-51). The court found that the Secretary's interpretation of the statute, which permitted states to treat personal injury awards as income, was unreasonable. The court explained that the legislative history indicated that Congress did not intend that *all* lump sums would be treated as "income." In

the absence of any specific statutory or regulatory definition of income, the court looked to other sources, primarily dictionaries and the Internal Revenue Code, and concluded that personal injury awards did not meet the ordinary definition of income and hence should not be covered by the lump sum rule. Pet. App. 41-51.

The court of appeals affirmed (Pet. App. 1-22). The court noted that "[p]ersonal injury awards serve to make one whole, in effect restoring one to the status quo before the injury was suffered" (*id.* at 12). And the court explained that the enactment of the lump sum rule in OBRA was not intended to redefine income (*id.* at 14-15). The court therefore concluded that it was compelled to reject the agency's interpretation on the ground that "it conflicts with Congress' intent and because its disparate treatment of personal injury awards is inequitable and thus contrary to HHS' own guidelines" (*id.* at 13-14, citing 45 C.F.R. 233.10(a)(1)).

3. On March 18, 1986, subsequent to the court of appeals' decision and the filing of the petition in this case, the Secretary promulgated regulations clarifying the meaning of "income" subject to the lump sum rule. 51 Fed. Reg. 9191, 9205. The new regulation specifically identifies personal injury and workers' compensation awards as "income." The new regulation (51 Fed. Reg. 9205 (1986), to be codified at 45 C.F.R. 233.20(a)(3)(ii)(F)) provides:

> When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring earned or unearned lump sum income (including for AFDC, title II and other retroactive monthly benefits and payments in the nature of a windfall, e.g., inheritances or lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it is paid, i.e., monies for back medical bills

resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, etc.), the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility.

ARGUMENT

The court of appeals' decision incorrectly invalidates a statutory interpretation by the expert agency that has recently been reaffirmed after an extended rulemaking proceeding. Because the decision affects numerous claimants in an important social welfare program and directly conflicts with a decision of another court of appeals, it is appropriate for this Court to grant certiorari to resolve the conflict and restore uniformity to the administration of this major nationwide program.

1. The agency interpretation in this case treating personal injury awards as income subject to the lump sum rule fully accords with the policies of the statute and with the apparent congressional intent. Congress was concerned that lump sum payments were being dissipated quickly with the result that families who had received lump sum payments were again on the AFDC rolls shortly after receiving such payments as soon as their resources dipped below the resource limit (see 42 U.S.C. 602(a)(7)(B)). The lump sum rule was designed to encourage AFDC recipients to budget monies received in a lump sum and spend them wisely to meet their current and future needs, rather than depending on AFDC assistance to pay for their subsistence as had been necessary before the lump sum was received. The legislative history evinces no intent to treat personal injury awards different from

other lump sum payments for these purposes. The Senate Committee Report explained the purpose of the OBRA amendment in broadly applicable terms:

> The commmittee believes that lump-sum payments should be considered available to meet the ongoing needs of an AFDC family * * *. The committee amendment would require that such income received in a month be considered available as income in the month it is received and also in future months.

S. Rep. 97-139, 97th Cong., 1st Sess. 505 (1981). And the House Committee had identified the amendment as intended to require the states "to consider *all* lump-sum payments as income available to meet a family's needs." Staff of House Comm. on Ways and Means, 97th Cong., 1st Sess., *Description of the Administration's Legislative Recommendations Under the Jurisdiction of the Ways and Means Committee* 53 (Comm. Print 1981 (emphasis supplied)).

The court of appeals' refusal to defer to the Secretary's interpretation was based in large part on its conclusion that a personal injury award was not gain to the recipient, but rather was designed to make him whole for the injury suffered. It does not necessarily follow from this conclusion, however, that personal injury awards should be treated as "resources," rather than "income" subject to the lump sum rule. To a large degree, the purpose of a personal injury award, and this is clearly manifested in the case of a workers' compensation award, is to compensate an individual for a reduction in earning capacity due to an injury. The award, while not gain in the sense that the recipient is financially better off than if he had not been injured, is designed as a substitute for income.[1] It is

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[1] A portion of a personal injury award is often intended to compensate the individual for specific sums expended as a result of the accident, for example, medical expenses. This portion of the award is not

reasonable to expect the recipient to budget such an award to meet his future needs in order to offset the lack of future income that he will no longer be able to earn in light of his injury, and it therefore makes perfect sense for the award to be treated as income for purposes of the lump sum rule.

2. Subsequent to the court of appeals' decision in this case, the Seventh Circuit upheld the application of the lump sum rule to personal injury awards. *Watkins* v. *Blinzinger*, No. 85-2366 (Apr. 18, 1986). The court found that personal injury awards are "income in a fundamental sense," especially noting that much of the award may represent lost wages (slip op. 5). The court concluded that the Secretary's definition was "consistent with the will of Congress," which prescribed no restriction on the proper definition of income. The Seventh Circuit specifically noted that its decision created a conflict among the circuits because of its specific rejection of the instant case (*id.* at 4 n.4).

In light of the recent developments subsequent to the court of appeals' decision in this case, it is appropriate for the Court to grant certiorari here to resolve the conflict in the circuits and permit uniform administration of the AFDC program.[2] Respondents' suggestion (Br. in Opp. 12 n.4) that Supreme Court review of this issue may be un-

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a substitute for income, but the Secretary's regulations would not treat it as such under the lump sum rule. Rather, any amount that is "earmarked and used for the purpose for which it is paid, i.e., monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources" is to be excluded from the lump sum payment for purposes of applying the rule of Section 402(a)(17). 51 Fed. Reg. 9205 (1986), to be codified at 45 C.F.R. 233.20(a)(3)(ii)(F); see also 51 Fed. Reg. 9197 (1986).

[2] If certiorari is denied here, the class-wide injunction entered by the district court (Pet. App. 53) against petitioner applying the lump sum rule to personal injury awards will remain in effect.

necessary because the Secretary's new regulations may exclude personal injury awards from lump sum income has not been borne out; after extended consideration, the Secretary has reaffirmed the administrative policy of treating personal injury awards under the lump sum rule. Respondents' suggestion (Br. in Opp. 16) that review by this Court is unnecessary because the other courts of appeals may all agree with the decision below has also proven incorrect. There is now a clear conflict in the circuits. While it is possible that the Fourth Circuit could reconsider its position in this case in light of *Watkins* and the new regulation, that appears unlikely in view of the fact that the court of appeals explicitly recognized that it was disagreeing with an agency interpretation that was entitled to deference (Pet. App. 13). Thus, it appears that, without intervention by this Court, the conflict in the circuits on this issue will persist and probably proliferate.[3] The orderly administration of the AFDC program and uniform treatment of recipients nationwide will be best served if the Court grants certiorari here and expeditiously resolves this conflict.

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[3] District courts in other circuits are also sharply split on this issue. Compare *Coakley* v. *Sunn*, No. 85-1233 (D. Hawaii Apr. 2, 1986); *Jackson* v. *Guissinger*, 589 F. Supp. 1288 (W.D. La. 1984); *Betson* v. *Cohen*, 578 F. Supp. 154 (E.D. Pa. 1983), rev'd on other grounds, 749 F.2d 1009 (3d Cir. 1984), cert. denied, No. 84-1350 (Apr. 22, 1985) (upholding application of lump sum rule) with *LaMadrid* v. *Hegstrom*, 599 F. Supp. 1450 (D. Ore. 1984) and *White* v. *Rahm*, No. C85-0077 (W.D. Wash. Apr. 20, 1985), consolidated appeals pending Nos. 85-3704 and 85-3975 (9th Cir.); *Payne* v. *Toan*, 626 F. Supp. 553 (W.D. Mo. 1985) (rejecting application of lump sum rule).

CONCLUSION

The petition for a writ of certiorari should be granted.
Respectfully submitted.

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